

P-999/R-85-599WITHDRAWING PROPOSED RULE AMENDMENTS

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Amendments
to Rules Governing Telephone Inter-
Exchange Calling, Minn. Rules, parts
7815.0100 to 7815.1600.

ISSUE DATE: Nov. 30, 1988

DOCKET NO. P-999/R-85-599

FINDINGS OF FACT, CONCLUSIONS,
AND ORDER WITHDRAWING
PROPOSED RULE AMENDMENTS

The above-entitled matter came on for decision before the Minnesota Public Utilities Commission (Commission) on the 23rd day of August, 1988. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Commission, in accordance with statutory requirements regarding the adoption of controversial rules, after considering the Statement of Need and Reasonableness, after considering all of the testimony and evidence adduced upon the records, files and proceedings herein, after considering the Report of the Administrative Law Judge, and after considering the advice and comment of the Legislative Commission to Review Administrative Rules, the Commission, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order Withdrawing Proposed Rule Amendments:

FINDINGS OF FACT

1. Notice of the Commission's intent to adopt the above rules without a public hearing and notice of intent to adopt the above rules with a public hearing if twenty-five or more persons request a public hearing was published in the State Register on January 25, 1988, (12 State Register 1534) and was sent by mail to all persons on the list maintained by the Commission pursuant to Minn. Stat. sections 14.14, subd. 1a and 14.22 (1986) on January 22, 1988.
2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.
3. All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on February 24, 1988.

4. During the comment period the Commission received more than 25 requests for public hearing, none of which were subsequently withdrawn.
5. The proposed rule amendments came on for hearing before Administrative Law Judge Allan W. Klein on March 3 and 4, 1988.
6. After the hearing, the period for submission of written comment and statements remained open until March 24, 1988, and the three-day response period closed on March 29, 1988.
7. The Administrative Law Judge issued his Report on May 6, 1988. The Chief Administrative Law Judge issued his Report approving the Report of the Administrative Law Judge on May 10, 1988.
8. The Report of the Administrative Law Judge found that the record demonstrated the need and reasonableness of the proposed rule amendments, with the exception that the record did not demonstrate the reasonableness of the proposed amendment to part 7815.0800, subparts 2 and 3, regarding the basis of rates for proposals to install or eliminate extended area service. The Administrative Law Judge further found that the record did support the reasonableness of a rule amendment that accorded some recognition to lost contribution in the basis of rates.
9. On May 24, 1988, the Commission reviewed the Administrative Law Judge's Report. The Commission resolved to request the advice and comment of the Legislative Commission to Review Administrative Rules (LCRAR) on the policy question of whether to include lost toll contribution in the basis of extended area service rates, pursuant to Minn. Stat. section 14.15, subd. 4 (1986).
10. The LCRAR met on June 15 and June 23, 1988 to review the proposed rules.
11. The LCRAR issued its advice and comment on June 30, 1988. In its advice and comment, the LCRAR:
 - A. directed the Commission to seek legislative direction on the following matters:
 1. What is the purpose of EAS? Is it a basic or a premium service? Does it

have characteristics of both? Should its rate include recognition (perhaps a percentage) of lost toll contribution?

2. Is EAS contrary to the legislative policy in Laws 1987, Chapter 340 which promotes competition in the telephone industry? Do EAS rates encourage or discourage competition?

3. Should interLATA EAS be prohibited or restricted? If interLATA EAS is allowed, should EAS rates compensate interLATA carriers for lost revenues when EAS totally replaces long distance service?

4. Should the Legislature limit or encourage the expansion of EAS by providing specific criteria for the Commission in deciding EAS petitions?

5. If EAS rates are flat and the service is mandatory, should persons on fixed incomes be eligible for some form of financial assistance?

6. Is a general rate case a reasonable way for smaller telephone companies to recoup lost toll contribution if it is not included in the EAS rate rule?

B. strongly advised the Commission to consider whether it would be appropriate to adopt the proposed EAS rule prior to getting further legislative direction and prior to the conclusion of the Commission's proceeding In the Matter of the Petition of Certain Subscribers in the Exchanges of Zimmerman, Prescott, Waconia, Belle Plaine, North Branch, Lindstrom, New Prague, Cambridge, Hudson, Houlton, LeSueur, Cannon Falls, Delano, Northfield, Buffalo, and Watertown for Extended Area Service to the Minneapolis/St. Paul Metropolitan Calling Area, Docket No. P-421, P-405, P-407, P-430, P-426, P-520, P-427/CI-87-76 (the Metro EAS case);

C. advised the Commission to establish and utilize a rule advisory task force, consisting

of representatives of all interested parties, when it proposes to adopt rules in the future;
and

D. concluded that after a review of this issue, including the taking of testimony from all the interested parties at a public hearing, it was unprepared to make a determination on the relative merits of the reasonableness of the proposed rule. The LCRAR found nothing to conclude that the Administrative Law Judge was in error.

12. Pursuant to Minn. Stat. section 14.19 (1986), the proposed EAS rule amendments are automatically withdrawn if the Commission does not submit a notice of amendment to the State Register within 180 days after issuance of the Administrative Law Judge's Report. The 180-day time limit does not include any days used for review by the Chief Administrative Law Judge or the LCRAR. Therefore, the proposed EAS rule amendments will be automatically withdrawn unless the Commission submits a notice of amendment to the State Register by December 6, 1988.
13. On August 12, 1988, the Commission met to review the LCRAR's advice and comment. As a result of its review, the Commission finds that:
 - A. the LCRAR's advice and comment addressed the proposed rule amendments in general and was not limited to the policy issue of how to set the basis of rates for EAS;
 - B. the LCRAR strongly advised the Commission to consider whether it is appropriate to adopt the proposed EAS rule amendments prior to getting further legislative direction and prior to the conclusion of the Metro EAS case;
 - C. further legislative direction could affect the current EAS rule and any or all of the proposed rule amendments, including the proposed rule amendment concerning the basis of EAS rates; and
 - D. pursuant to Minn. Stat. section 14.19 (1986), the proposed EAS rule amendments would be automatically withdrawn before the 1989 Minnesota Legislature has an opportunity to provide further direction to the Commission.

CONCLUSIONS

1. The Minnesota Public Utilities Commission duly acquired and has jurisdiction over this proceeding pursuant to Minn. Stat. section 237.10 (1986).
2. The Commission published and served due, timely, and adequate notice of the intent to adopt

the rules without a public hearing and notice of intent to adopt the rules with a public hearing if twenty-five or more persons request a hearing.

3. The Commission has complied with all relevant legal and procedural requirements of statute and rule.
4. The Commission has considered the LCRAR's advice and concludes that it is not appropriate to adopt the proposed EAS rule amendments at this time.
5. The Commission will withdraw the proposed EAS rule amendments before they are automatically withdrawn pursuant to Minn. Stat. section 14.19 (1986).
6. The Commission will take no further action on amending its current EAS rules until after the 1989 Minnesota legislative session.

ORDER

1. The attached proposed amendments to Minn. Rules, parts 7815.1000 to 7815.1600, governing telephone inter-exchange calling, are withdrawn pursuant to the authority vested in the Minnesota Public Utilities Commission by Minn. Stat. section 237.10 (1986).

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary